HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION
Dated Nainital the 20th September, 2006
IIIrd Bail Application No. 650 of 2006

Order on the bail application of the accused.

CRIMINAL SIDE

1. Harvinder @ Sonu
S/o Shri Charanjit Singh
R/o C-235 Vrindavan Garden Janakpur
Police Station – Sahibabad,
District – Ghaziabad (U.P.)
2. Jasbir Kaur
W/o Late Sukhpal @ Titoo
R/o 737 Sanjay Gandhi Colony,
Ludhiyana (Punjab) …….Applicants

Versus

State of Uttaranchal …….Opposite Party

In Case Crime No. 193 of 2004
U/s 302 / 201/34 I.P.C.
Registered with Police Station – Laxman Jhula
District – Pauri Garhwal (ST No. 13 of 2004)

Hon'ble J.C.S. Rawat, J.

Heard Sri B.D. Malhotra-learned counsel for the applicants, learned AGA for the State and perused the record.

This is subsequent bail application filed by the petitioner No.1 as third bail application bearing No.650 of 2006. One bail application (hereinafter referred as First Bail Application) was filed on 19.4.2005 by Sri L.K. Tiwari and G.S.Negi- Advocate on behalf of Smt. Jasbir Kaur wife of Sarabpal Singh, resident of Ludhina (Punjab) and Harvinder alias Sonu son of Charanjit Singh, resident of Sahibabad (Ghaziabad). In this bail application occasions the adjournment was sought on behalf of the counsel for the petitioner and the case was adjourned on different dates. Meanwhile during the pendency of the said bail application another bail application (hereinafter referred as second bail application) was moved on 21.02.2006 by Mr.Pankaj Purohit, counsel for the applicants in which Harvinder alias Sonu and Smt. Jasbir Kaur, the applicants of the previous bail application moved the bail application. The said bail application was allowed by this court on 28.03.2006 and both the accused were directed to be released on furnishing

of the sureties on bail. The first bail application bearing No. 347 of 2005 remained pending before this court. This application was listed on 26.06.2006 in which Mr. L.K.Tiwari Advocate appeared on behalf of the applicants. In First Bail Application No. 347 of 2005 Smt. Surendra Kaur wife of Charan Singh filed an affidavit alleging therein that she is the mother of the applicants and is also their pairokar and she had been fully acquainted with the facts of the case. This affidavit was filed alongwith the first bail application. In the subsequent bail application, filed the affidavit by saying Smt. Surendra Kaur who had filed the affidavit in the first bail application No. 347 of 2005 and had stated in para No.2 of the affidavit which is reproduced below:

> *"2. That this is the first bail application moved by the applicants before this Hon'ble Court in respect of the case crime no. 193/2004 under sections 302/201/34 IPC registered with the police station Laxman Jhula, District Pauri Garhwal and neither any bail application is pending before the learned Sessions Judge nor before this Hon'ble Court,"*

Thus, the pairokar, the mother of the petitioner Smt. Surendra Kaur had alleged in the second bail application that this is the first bail application of the applicants. The court, assuming that this is the first bail application, the accused/applicants were enlarged on bail on 28.03.2006. However, in the first bail application the court had observed that the aforesaid facts were not brought to the notice of the court during the pendency of the second bail application that the first bail application was pending before the Court. Thus, the Court observed that while taking the bail, the applicants had concealed the material facts before the court and fraud was played by the applicants before the Court. In view of the above facts and circumstances the court directed Sri Pankaj Purohit, the counsel, to produce both the applicants before the Court on 30.06.2006. The perusal of the record also reveals that on 30.06.2006 the case was adjourned on the request of the counsel for the applicants for 03.07.2006 and on that day Sri Panjak Purohit, counsel for the applicants in the second bail application and Sri L.K. Tiwari, counsel for the applicants in the first bail application were present. Sri Pankaj Purohit counsel for the applicants made a statement before the Court that he had

informed the applicants telephonically as well as he had sent the message through registered post but inspite of the information sent, the applicants were not appearing before the Court on the date fixed. Hence the Court issued the non-bailabl warrants against the applicants. It was also informed during the hearing of the cancellation of bail that another accused Jasbir Kaur had not been releases so far from the jail, so the Court directed the Chief Judicial Magistrate concerned to take necessary steps for procuring the custody of accused Harvinder alias Sonu and issued notices to the sureties. The present applicant appeared before the Court on 24.07.2006 and keeping in view of the suppression of the facts in the bail application, the bail granted by this Court was cancelled by this Court. The said order of cancelling the bail had not been challenged and it had attained the finality.

Now the present applicant had filed the third bail application to release the applicant on bail. This bail application was listed before Hon'ble B.C.Kandpal, J who had cancelled the bail of the present applicant. Hon'ble B.C.Kandpal, J on 28.08.2006 when this bail application was listed before him, he had observed that the bail was granted by me and the cancellation order had been passed by him. As the bail had been granted by me so the Hon'ble Judge was of the view that it would be desirable in the interest of justice to place this application before me for hearing and disposal.

Learned counsel for the petitioner contended that there was no fault of the petitioner and it was the duty of the counsel to verify as to whether any bail application is pending before the court or not. The learned counsel had not verified this fact and the petitioner was unaware about all these facts, as such, the petitioner had no fault and he is entitled to be enlarged on bail. The petitioner has further pleaded that the applicant is suffering because of the professional misconduct of Sri Pankaj Purohit Advocate, he had to go behind the bars.

The learned counsel for the State contended that the petitioner had suppressed the material facts before the Court that the first bail application was pending and the affidavit filed on behalf of the petitioner in the second bail application clearly states that this was the first bail application of the applicant. The learned counsel for the State contended that the petitioner had suppressed the material facts before the Court and obtained the bail by playing the fraud before the Court. The perusal of the record clearly reveals

that the first bail application was moved on the instructions of Smt. Surendrs Kaur, the mother of the applicant by Sri L.K. Tiwari, Advocate and she had filed the affidavit in that bail application. In the another second bail application she had also filed the affidavit alleging therein that this is the first bail application without indicating that the first bail application is pending. The petitioner has suppressed the facts and the applicants had not come with the clean hands to get the bail of the applicants. If it would have been informed to the Court that the first bail application is pending, the Court would have insisted to list that bail application and the order would have been passed in the first bail application. Thus, the petitioner has played fraud with the Court and, as such, the petitioner does not deserve any sympathy and the bail application is liable to be rejected.

The bail application is dismissed.

(J.C.S. Rawat, J.)

Dated 20.09.2006
Negi